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No. 83-_____

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In The
SUPREME COURT OF THE UNITED STATES

October Term, 1983

DEAL PRINCE WATKINS, PETITIONER

v.

UNITED STATES OF AMERICA, RESPONDENT

Petition for a Writ of Certiorari
to the Fourth Circuit Court of Appeals

DEAL PRINCE WATKINS
Attorney Pro Se for Petitioner
Highway 87, Star Route 1
Southport, North Carolina 28461
919 / 457-5935

QUESTION PRESENTED FOR REVIEW

1. Whether the Court's instructions to the jury in a criminal case were sufficient to apprise the jury of the defendant's theory of the case, or whether they in fact constituted an instruction directing the jury to find the defendant guilty of all charges.

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NO. 83-

DEAL PRINCE WATKINS, PETITIONER

v.

THE UNITED STATES OF AMERICA, RESPONDENT

Petition for a Writ of Certiorari
to the Fourth Circuit Court of Appeals

Petitioner requests that a writ of
certiorari issue, in this case, to review
the judgment of the United States Court
of Appeals affirming the conviction of
the herein petitioner.

REPORT OF OPINIONS BELOW

The Fourth Circuit Court of Appeals affirmed the conviction of the petitioner in an unpublished per curiam opinion on November 30th, 1983. Thereafter, rehearing was denied on March 8th, 1984. The text of the opinion affirming the conviction is incorporated herein as Appendix A.

JURISDICTIONAL STATEMENT

1. The date of the order issued by the Fourth Circuit Court of Appeals denying rehearing was issued on March 8th, 1984.

The Rules of the supreme Court of the United States, Rule 20.1 provides:

"a petition for writ of certiorari...shall be deemed in time when it is filed with the Clerk within sixty days after the entry of...judgment."

Sixty calendar days from March 8th, 1984, would fall on May 7th, 1984, for timely filing. The Petitioner has met that jurisdictional deadline.

2. The jurisdiction of this Court is invoked pursuant to Article III, Section 2, of the Constitution of the United States.

3. Jurisdiction is specifically set

out by statute in this cause in 28 USC
§1254, relating to reviewing decisions of
a United States Court of Appeals by
certiorari.

CONSTITUTIONAL PROVISIONS AND STATUTES

Constitution of the United States

Amendment Five of the United States

Constitution states in pertinent part:

"No person shall...be compelled in any criminal case to be a witness against himself..."

26 USC §7203 states as follows:

"Any person required under this title to pay any estimated tax or tax, or required by this title or by regulations made under authority thereof to make a return..., keep any records, or supply any information, who willfully fails to pay such estimated tax or tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$10,000, or imprisoned not more than 1 year, or both, together with the costs of prosecution."

18 USC §1001 states as follows:

"Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than five years, or both."

26 USC §501(c)(3) states in part:

"(c) List of Exempt Organizations --

"(3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition...or for the prevention of cruelty to

children or animals, no part of
the net earnings of which
inures to the benefit of any
private shareholder or
individual..."

STATEMENT OF THE CASE

A. Disposition below.

On January 10, 1983, Petitioner was indicted by a federal grand jury impaneled in the United States District Court for the Western District of Tennessee. The indictment alleged in Count I, a violation 26 USC §7203, willful failure to file income tax return for the year 1976. Count II alleged violation of 18 USC §1001, relating to a tax return filed for the year 1977. Count III alleged the same violation relating to a tax return submitted for the year 1978 and Count IV alleged violation of 26 USC §7203, willful failure to file income tax return for the year 1979.

By motion filed March 2, 1983, under the authority of Rule 21(b), Federal Rules of Criminal Procedure and 18 USC

§3237(b), venue in the case was transferred from the Western District of Tennessee to the Eastern District of North Carolina. The file number assigned by the Clerk of the District Court in North Carolina was 83-6-CR-7.

Trial of the action commenced in Raleigh, North Carolina, on May 16, 1983, before Judge W. Earl Britt, and concluded on May 18, 1983. After deliberation, the jury found the Petitioner guilty of all counts and the Court sentenced the Petitioner. In summary, the sentence was \$40,000 in fines, a three year active prison sentence followed by five years probation, during which time Petitioner was to file all back tax returns, pay all back taxes and otherwise generally comply with the terms and conditions of probation.

An appeal was commenced with the filing of a notice thereof on the 19th

day of May, 1983. So-called "Informal Briefs" were filed with the Fourth Circuit and a decision came out of the Fourth Circuit on the 30th day of November, 1983, which decision affirmed the conviction in an unpublished per curiam opinion. See Appendix A. Rehearing ~~en banc~~ was sought but denied on March 8th, 1984. This Petition for Writ of Certiorari follows.

B. Facts.

At all times relevant, Petitioner was employed as a Quality Control Supervisor at the Brunswick Nuclear Power Facility, in North Carolina. During the year 1976, Petitioner was responsible to see that all Nuclear Regulatory Commission regulations were complied with during the construction of the Brunswick facility. Petitioner was the individual directly responsible to both management and the NRC for any breaches in safety and

construction regulations at the facility.

Upon noticing a growing concern amongst the public and their representatives in government over the safety of nuclear power facilities in general, and after stumbling across a booklet entitled "Hearings before the Select Committee to Study Governmental Operations with respect to Intelligence Activities of the United States," dated October 2, 1975,¹ and reading Internal Revenue Code §6103,² relating to the disclosure by IRS of tax return and return information to other government agencies, Petitioner became concerned that his tax return or return information could be disclosed to the NRC and could form the basis of an attack upon him

¹ Published by the Government Printing Office after the conduct of such hearings by Senator Frank Church of Idaho, Chairman of the Select Committee.

² 26 USC §6103, 1976 Edition.

insofar as his duties as the Quality Assurance Specialist at the Brunswick Nuclear Power Facility were concerned.

Later on in 1977, but before April 15, 1977, (the time for filing 1976 federal individual income tax returns) Petitioner read the Supreme Court decisions in ~~United States v. Sullivan~~, 274 U.S. 259 (1927) and ~~Garner v. United States~~, 424 U.S. 648 (1976), regarding the claim and exercise of the Fifth Amendment protection against self-incrimination on a federal income tax return. After reading these Supreme Court cases, Petitioner concluded that the way to protect himself from the possible mis-use of his tax return or return information in connection with the NRC was to assert his Fifth Amendment right against self-incrimination on the face of the return as to individual questions asked.

Petitioner did just that on his income tax form for the year 1976. To the return, he attached his form W-4 to provide information to the IRS which was both innocuous in nature and which would allow the IRS to compute a tax.³

In addition to the form W-4, Petitioner attached several pages of documents containing references to court decisions supporting the right to assert, in good faith, the Fifth Amendment on a 1040 form.

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<sup>3</sup> All factual statements made here are part of the record in the lower court and come from an ~~in camera~~ declaration, consisting of eight pages, submitted by Petitioner to United States Magistrate Alexander Denson, the Magistrate assigned to hear and recommend disposition on pre-trial motions. The documents referred to in the foregoing paragraph were attached to the declaration. The declaration was made in support of a motion to dismiss Count I of the indictment, entitled "Motion for Judicial Determination on Validity of 5th Amendment Claim & to Dismiss." A memorandum was filed with the motion.

The "Fifth Amendment" tax return filed by the Petitioner for the year 1976 formed the basis of the charge of failure to file set out in Count I. The government contended that the return did not contain information from which a tax liability could be computed and thus, was not a return within the meaning of the Internal Revenue Code.

Later on in 1977, Petitioner became a member of a church organization known as the Basic Bible Church of America, (herein after "BBC") a religious organization.<sup>4</sup> In connection with his joining the BBC, Petitioner established his own chapter thereof, appointed trustees and conducted regular public

<sup>4</sup> At all times relevant, the Basic Bible Church was recognized by IRS as an organization exempt from federal income tax under the authority of 26 USC §501(c)(3), by virtue of being organized and operated exclusively for one or more exempt purposes under §501(c)(3).

church services.<sup>5</sup>

In addition to establishing a separate chapter of the BBC, Petitioner executed a "vow of poverty." This document, Petitioner contends, constituted a contribution by Petitioner of all his possessions, present and future, to the BBC to be used for the stated purpose of the BBC. Petitioner received a "letter of direction" from the superiors within the BBC instructing him to use his employment with the Brunswick Nuclear Power Facility as a vehicle through which to evangelize his church's religious beliefs. These documents were

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<sup>5</sup> All factual statements made here are part of the record, either from testimony at the trial or through declarations submitted pre-trial in support of motions. If statements come from declarations rather than trial testimony, the particular declaration will be specifically identified. Otherwise, the facts come from trial testimony.

attached to Petitioner's Motion to Dismiss Counts of the Indictment due to Unconstitutional Vagueness of the Involved Law, and were verified by a declaration attached to said motion.

Petitioner at all times used his employment as a vehicle through which to evangelize his religious beliefs, turned his funds over to the BBC chapter which he had formed, and used the money for the purposes of operating the BBC chapter in general, as per the vow of poverty.

On April 15, 1978, time for filing 1977 individual income tax returns, Petitioner submitted a form 1040 on which he declared his receipts from the Brunswick Nuclear Power Facility in full. Petitioner stated on the return that "I have taken a Vow of Poverty (see attached) and am, therefore, exempt from Federal income tax and FICA tax." Petitioner claimed a refund of all

federal income and FICA taxes withheld that year. To the return, Petitioner attached a so-called "Schedule A" which explained Petitioner's position to IRS, a copy of the vow of poverty, a document entitled "Statutory Notice Pursuant to Internal Revenue Code Sec. 3402(n)" (relating to withholding of federal income tax at source), a copy of the letter of exemption issued to the BBC by IRS in April of 1974, and a notice issued by the BBC to the effect that Petitioner was a minister of the BBC authorized to perform all functions incident thereto.

For the year 1978, in April of 1979, Petitioner submitted a similar form 1040, but to which he attached additional documentation, including, a so-called "Schedule T" explaining his filing status and claim, a copy of the Certificate of Ordination of Petitioner as a Minister of the BBC, a copy of the letter of

direction from the BBC supervisor to Petitioner directing Petitioner's actions and use of his funds, the vow of poverty executed by Petitioner, and a copy of the letter of exemption from IRS to BBC issued in April, 1974.

The filing of the two documents described above formed the basis of the charges in Counts II and III of the indictment which alleged the willful submission of a statement known to be false as to a material matter under 18 USC §1001.

For the year 1979, Petitioner filed no federal income tax return and this failure formed the basis of the charge in Count IV of willful failure to file.

For the years in question in Counts II-IV of the indictment, Petitioner contended that his only receipts were exempt from taxation in that they were earned by him as an agent of the church



and the money was used for exempt purposes under 26 USC §501(c)(3).

### REASONS FOR GRANTING WRIT

Contention: The Court deprived the Petitioner of a fair trial by refusing to instruct the jury on his theory of the case. The court refused requested instructions on settled principles of law in connection with the Petitioner's defense.

Argument: In this criminal tax case, the one primary concern for the jury was whether or not the actions of the defendant regarding his federal income tax returns for the years 1976-1979 constituted a willful violation of the law. In this context, two issues were raised. One was whether the defendant's claim and exercise of the Fifth Amendment on his 1976 federal income tax return was made in good faith, and secondly, (relative to years 1977-1979) whether the defendant in good faith believed that his

receipts from the Brunswick Nuclear Power Facility were exempt income taxation under 26 USC §501(c)(3).

Regarding these issues, the Petitioner presented substantial evidence going toward establishing a good faith reliance upon the Fifth Amendment protection as to the 1976 tax return, and a good faith reliance upon cases, statutes and other ruling regarding the church issue for the subsequent years. In addition, the Petitioner requested numerous jury instructions, 53 in all, relating to the law of the case and his theory of defense. The court refused to give any instruction requested by the Petitioner.

It is well settled in the law that a defendant in a criminal case is entitled to have the court fully instruct the jury on his theory of the case, no matter how unreasonable it may appear to be. See

United States v. Indian Trailer Corp., 226 F.2d 595 (7th Cir. 1955) and Koontz v. United States, 277 F.2d 53 (5th Cir. 1960). The only stipulation is that the defendant bears the responsibility to request the instructions, which he did in this case, and must object to the court's failure to give the instructions before the jury retires to deliberate, which he also did in this case.

In 1973, this Court settled a dispute regarding the standard of willfulness necessary to sustain a conviction in tax related offenses. In United States v. Bishop, 412 U.S. 346 (1973), this Court held that the same standard of willfulness was necessary to sustain a conviction for a misdemeanor tax offense as was necessary in a felony tax offense. The standard now applied to all tax offenses is that willfulness constitutes a voluntary, intentional disregard of a

known legal duty; as distinguished from mistake, inadvertence, misunderstanding, negligence, gross negligence, or a good faith belief that the accused had done all that the law required. See also United States v. Pomponio, 429 U.S. 10 (1976), and United States v. Murdock, 290 U.S. 389 (1933). A defendant could not therefore, be said to have acted willfully in connection with his actions if he relied in good faith upon the law. As this Court said in Bishop:

"The requirement of an offense committed 'willfully' is not met therefore, if a taxpayer has relied in good faith on a prior decision of this Court."

The evidence in the case plainly showed that the Petitioner indeed had relied in good faith upon prior decisions of the Supreme Court in connection with his tax activities for the years in

question.

For example, attached to the 1976 tax return (the Fifth Amendment return) were several pages of reference to cases from this Court, including United States v. Sullivan, 274 U.S. 259 (1927) and Garner v. United States, 424 U.S. 648 (1976), two cases which specifically held that the Fifth Amendment may be claimed on the face of an income tax return.

The Petitioner specifically requested instructions to the jury regarding the Fifth Amendment and its use on an income tax return. The instructions were requested on the authority of Bishop, United States v. Garner, 607 F.2d 92 (5th Cir. en banc 1979) (good faith reliance upon the law not willfulness).

The only instruction the court gave the jury regarding the issue of the Fifth Amendment is as follows:

"The evidence discloses that an entry appears on certain of the documents filed by the defendant as follows: 'Object - Self-incrimination.' I instruct you that the validity or propriety of a claim of self-incrimination is a matter of law to be determined by the Court. There being no contention by the government in this case that defendant failed to report illegally obtained income, I instruct you that the privilege against self-incrimination has no application and should not be considered by you in arriving at your decision." Transcript, page 390.

The court gave the jury the impression that the Fifth Amendment could only be used where income was received illegally, and that since no such charge existed in the case, the Fifth Amendment was no defense.

This instruction constitutes plain error since this Court and others have repeatedly held that good faith reliance upon the law and prior decisions of this Court is an absolute defense to

willfulness. Specifically, in **Garner**, this Court held that the right against self-incrimination, if asserted in good faith, even if erroneous, is an absolute defense to a §7203 charge.

To be sure, the question of good faith is a jury matter and a finding of a lack thereof will not generally be disturbed on appeal. However, in this case, the trial judge precluded the jury from even considering the question of the Petitioner's good faith in connection with his claim of the Fifth Amendment. The defendant was thus deprived of a fair trial on the merits of his defense.

As stated, the court left the jury with the impression that the Fifth Amendment applies only where the defendant received illegal income. This is flatly false. One need not be guilty of any offense in order to enjoy the protections of the amendment. One need



only show that he believed himself to be faced with substantial hazards of self-incrimination which were real and appreciable. See Marchetti v. United States, 390 U.S. 39 (1968); Miranda v. Arizona, 384 U.S. 436 (1965); United States v. Neff, 615 F.2d 1235 (9th Cir. 1980). This showing was made with the in camera declaration filed by Petitioner. See page 13, supra.

Regarding the years 1977-1979, where the BBC was an issue, the Petitioner introduced substantial evidence showing his reliance upon 26 USC §501(c)(3) in establishing the church and claiming tax exemption in connection therewith. Correspondence introduced into evidence by Petitioner was replete with references to statutes and court cases upon which he relied. Also in the record was extensive testimony of eye witnesses regarding Petitioner's good faith belief in the

validity of his church and its legal stance.

The government raised the issue of the law of tax exemption in this case. The charges in Counts II and III of the indictment related to the Petitioner's claim on the returns that he was exempt from income taxation by reason of his vow of poverty. It was the government's contention that the Petitioner's vow of poverty was not ~~bona fide~~. This statement was made in the Government's Trial Brief at page 15. Petitioner introduced evidence to the contrary.

In addition to the requested instructions on the Fifth Amendment issue, Petitioner requested some 30 jury instructions on the issue of tax exempt organizations.

The instructions sought to inform the jury as to what constitutes a principal/agent relationship, and that in

a principal/agent relationship, the agent is not taxed on money earned on behalf of a principal. Other instructions would have told the jury exactly what the test is under 501(c)(3) in determining whether an organization is exempt from income taxes. Generally, the instructions would have given the jury an overall analysis of the law of tax exemption to enable them to determine whether the Petitioner was in fact tax exempt, or whether there was a reasonable basis in the law to believe that he was tax exempt. (See **Garber**, supra, regarding a reasonable basis in the law to justify actions alleged to be criminal.)

These instructions were requested on the basis of such sound legal authority as **Maryland Casualty Co. v. United States**, 251 U.S. 342 (1920), relating to the taxability of of income to an agent where such income is received in behalf

of a principal; C.J.S. Agency §§4-52; 26 USC §501(c)(3) itself; Sun-Herald Corp. v. Duggan, 73 F.2d 298 (2nd Cir. 1936), regarding what constitutes "organized" for an exempt purpose under §501(c)(3); Church in Boston v. Commissioner, 71 T.C. 102 (1978), regarding what constitutes "operated" for an exempt purpose under §501(c)(3); Western Catholic Church v. Commissioner, 73 T.C. 196 (1979), regarding what constitutes "religious activity" under §501(c)(3); Commissioner v. Tellier, 383 U.S. 687 (1966), St. Germain Foundation v. Commissioner, 26 T.C. 648 (1956) and Golden Rule Church Ass'n v. Commissioner, 41 T.C. 719 (1964), regarding what constitutes "inurement of net income" as that phrase is used in §501(c)(3).

Given the flavor of the Petitioner's instructions on this issue, they would have, if given, apprised the jury of the

law involved in the case, and would have apprised the jury of the theory of the Petitioner's defense to the charges set out in Counts II-IV of the indictment.

The instruction ultimately given by the court on the §501(c)(3) issue was as follows:

"Now, there has been evidence in this case concerning the Basic Bible Church of America and other religious organizations and some reference to exempt organizations. There has also been some evidence that the defendant took a vow of poverty and that he was a minister of a church.

"I instruct you that the law with regard to tax exempt organizations has nothing to do with the facts of this case. I further instruct you that whether defendant took a vow of poverty or whether he was a minister or member of any particular church should have no effect on your decision in this case." Transcript, pages 389-390.

While the law of tax exempt

organizations was an intrigal part of not only the defense, but the prosecution as well, the court instructed the jury that the law simply did not apply to the case, and refused to instruct on the Petitioner's theory of the case. In closing argument, the prosecutor took unfair advantage of the fact of the court's one-sided jury instructions. Despite that the fact of the religious issue was the main theory of the prosecution as to Counts II-IV, the prosecutor stated, in closing, as follows:

"The judge will tell you in his instructions that whether or not the defendant took an (sic) vow of poverty is not a defense. The fact that he may have even taken a vow of poverty -- that is not a defense to the crimes for which he is charged. Judge Britt will tell you that.

"All of this religious issue -- it is not applicable in this

case. It is not a defense for the crimes to which he has been charged." Transcript, pages 374-375.

The government set out the religious issue as their theory of prosecution in their Trial Brief and in their Bill of Particulars. They outlined it for the jury in their opening statement, and they presented evidence on it to the jury. They even requested their own jury instructions on the issue at the close of the evidence. Yet after finding out that the judge intended to strip the Petitioner of the defense entirely, the prosecutor argued in closing that tax exemption law did not apply.

The Petitioner was totally deprived of any meaningful trial in this case by virtue of the court's instructions and the prosecutor's taking unfair advantage of the situation as shown by the above excerpt from his argument. Similar

exploitation occurred at the hands of government counsel where the Fifth Amendment issue was concerned. See Transcript at pages 370-371, where we find the following closing argument language:

"The privilege against self-incrimination does not apply to the amount of wages that he receives lawfully. The judge will instruct you as to that. Listen carefully to his instructions. The privilege against self-incrimination is not a defense for Mr. Watkins."

In its perfunctory review of the trial in this case,<sup>6</sup> the Court of Appeals affirmed a conviction which may never have occurred had the trial court given the jury any instructions on the nature

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⁶ The Fourth Circuit refused to permit the Petitioner to file a brief with the Court of Appeals detailing the nature of his arguments, despite two separate requests for briefs.

of the Petitioner's defenses. Instead, the court told the jury that none of Petitioner's defenses applied, regardless of settled authority to the contrary.

A recent decision of the Ninth Circuit Court of Appeals, **United States v. Dahlstrom**, 713 F.2d 1423 (9th Cir. 1983), reiterated the Fifth Circuit's decision in **Garber**, and even the Fourth Circuit's decision in **United States v. Critzer**, 498 F.2d 1160 (4th Cir. 1974), holding that good faith reliance upon the law necessarily negates the essential element of willfulness in a tax case. **Dahlstrom** represents adherence to the long standing policy of this Court as set out in **Bishop**, that the criminal law concerns itself with willful violations of the tax laws and its purpose is not to penalize frank differences of opinion. **Bishop**, 412 U.S. at 361. See also, **United States v. Brooksby**, 668 F.2d 1102

(9th Cir. 1982).

Heretofore, the Circuits were in agreement that reliance upon the law is a defense in a tax case. The decision of the Fourth Circuit in this case constitutes a departure from that long-established position. The trial court told the jury that the law relied upon by the Petitioner had nothing to do with the case and that reliance thereon was not a defense. This kind of instruction is plain error in light of the facts of this case, and given the settled law discussed above.

The Writ of Certiorari sought in this case should be issued so that a decision which stands to effect axiomatic principles of criminal justice can be reviewed and reversed.

Respectfully submitted:

Deal Prince Watkins

DEAL PRINCE WATKINS

Attorney Pro Se for Petitioner
Highway 87, Star Route 1
Southport, North Carolina 28461

DECLARATION OF SERVICE

I, DEAL PRINCE WATKINS, attorney pro
se, Petitioner herein, hereby declare
under penalty of perjury that on ^{5th} _____
day of May, 1984, I served three copies
of the foregoing Petition for Writ of
Certiorari on the United States of
America, by mailing the same to Michael
L. Paup, Chief, Appellate Section, United
States Department of Justice, Tax
Division, Washington, D.C., 20530, via
first class mail in a postage pre-paid
wrapper.

Deal Prince Watkins

Deal Prince Watkins

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

UNPUBLISHED

No. 83-5126

United States of America, Appellee,

vs.

Deal Prince Watkins, Appellant.

Appeal from the United States District
Court for the Eastern District of North
Carolina, at Wilmington. W. Earl Britt,
District Judge. CR 83-6-01-CR-7

Submitted: September 16, 1983. Decided:
November 30, 1983

Before RUSSELL, WIDENER, and HALL,
Circuit Judges

(Deal Prince Watkins, Appellant Pro Se.
Glenn L. Archer, Jr., Assistant Attorney
General, Tax Division, Department of
Justice; Michael L. Paup, Chief,
Appellate Section, Tax Division,
Department of Justice, for the Appellee.)

PER CURIAM:

Deal Prince Watkins appeals from his convictions, under 26 USC §7203 and 18 USC §1001, with respect to his 1976 through 1979 tax filings. We find no merit in any of Watkins' contentions on appeal and affirm his convictions. In addition, we have reviewed the trial transcript and find ample evidence to support the verdicts against Watkins. We dispense with oral argument, since the dispositive issues have already been authoritatively decided.

AFFIRMED.